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TREASURY FOR OCC/EILEEN SIEGEL
TREASURY ALSO FOR OASIA/ICB/VIMAL ATUKORALA
TREASURY PLEASE PASS TO FEDERAL RESERVE AND SEC/E.JACOBS
JUSTICE FOR DOJ/CRM/ATMLS AND FOR OIA/RICHARD OWENS
FBI FOR CID

E.O. 12958: N/A

TAGS: [EFIN](#) [PGOV](#) [AU](#)

SUBJECT: BAWAG Settles Refco Lawsuit Out-of-Court

REF: A) VIENNA 1270 B) VIENNA 0976

Summary

1. BAWAG P.S.K. (BAWAG), Austria's troubled fourth largest banking group, reached an out-of-court settlement June 5 with creditors from the bankrupt U.S. brokerage firm Refco. As part of the settlement, BAWAG reportedly acknowledged that it assisted former Refco CEO Philip Bennett to conceal hundreds of millions of dollars in losses from Refco investors and creditors. According to the terms of the settlement, BAWAG will compensate Refco creditors and shareholders \$675 million. BAWAG also withdrew claims to \$425 million in outstanding loans to Refco. The way is now free to move forward with the planned sale of BAWAG. End Summary.

BAWAG'S Out-of-Court Settlement with Refco

2. In a June 5 out-of-court settlement, BAWAG P.S.K. (BAWAG), Austria's fourth largest banking group, and its 100% owner, the Austrian Trade Union Federation (OGB), agreed to pay \$675 million to the creditors of the bankrupt U.S. brokerage firm Refco. In addition, the OGB will have to transfer 30% (up to \$200 million) of any proceeds from the sale of BAWAG in excess of Euro 1.8 billion to Refco creditors. BAWAG also renounced its claims for a repayment of \$425 million in outstanding loans to Refco. The settlement allows BAWAG to regain control of \$1.1 billion in U.S. assets, which a U.S. court had previously blocked.

3. The settlement appears to close the chapter on BAWAG's problems with Refco. Refco creditors filed a \$1.3 billion class action suit on April 25, alleging BAWAG aided and abetted Refco CEO Phillip Bennett in fraudulent activities that led to Refco's October 2005 collapse. The lawsuit triggered a run on BAWAG deposit accounts and endangered the bank's stability, prompting the GoA to extend a Euro 900 million-rescue package (ref A).

4. The settlement reportedly includes an admission by BAWAG that it assisted Bennett to conceal hundreds of millions of dollars of Refco losses from Refco investors and creditors. From 2000 through February 2005 BAWAG apparently provided short-term loans worth hundreds of

millions of dollars to Refco, so that Refco could manipulate intercompany accounts and improve its balance sheet. BAWAG reportedly also acknowledged that it sought and received assistance from Bennett to conceal BAWAG's own investment losses (ref B) on its balance sheet.

15. According to BAWAG press statements, the settlement protects BAWAG and the OGB from criminal proceedings in the U.S. However, individuals may still face criminal charges. Both BAWAG and OGB announced that they would fully cooperate with U.S. authorities in any criminal investigation. The Austrian Public Prosecutor is also investigating the case.

BAWAG Up For Sale

16. The settlement allows BAWAG to submit its 2005 balance sheet, as certification was pending resolution of the U.S. lawsuit. The OGB now plans to proceed swiftly with its intent to sell BAWAG (ref B). BAWAG CEO Ewald Nowotny called the settlement "a good deal, because it draws a line with the past." The OGB has reportedly engaged Morgan Stanley to carry out the BAWAG sale.

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